

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0100P

**Individual Income Tax
Calendar Years 1995 and 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration**— Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayers' CPA, in a letter dated January 31, 2000, protested the penalty assessed and states that the taxpayers' assessment resulted from an Internal Revenue Service audit for 1995 and 1996.

Taxpayers sold a business effective January 1, 1995. As part of the sale agreement, there existed a down payment, along with installment payments through the year 2019. The same CPA who they had worked with for years prepared the taxpayers' returns, for 1995 and 1996. The issue during the Internal Revenue Service audit was not the amount of the gain associated with the sale, but the timing of when the gain was to be recognized. In the final analysis, the Service determined that a significant amount of the gain should have been reported in the year of the sale. This gain was attributed to depreciation recapture on the equipment that was sold. The issues involved were technical in nature and the taxpayers did not understand that there even was an issue when the returns were originally filed. Evidenced by the audit report, issued by the IRS, they did not assess a penalty for 1995 and only a nominal penalty for 1996. Under the circumstances, taxpayer requests that the penalties be abated.

I. **Tax Administration**— Penalty

DISCUSSION

Taxpayer requests the department waive the penalty assessed because the IRS did not assess a penalty for 1995 and the issue was technical in nature.

Taxpayers failed to recapture depreciation on the equipment when its S-Corporation was sold. The failure to recapture depreciation led to the imposition of additional federal income tax. The tax for 1995 was increased from \$5,066 to \$44,000. A similar adjustment was made for calendar year 1996 with less tax impact.

Taxpayer was assessed a penalty for failure to notify the department of any modifications of a federal income tax return filed by it. According to IC 6-3-4-6, the taxpayer shall file the notice, on the form prescribed by the department, within one hundred twenty (120) days after the modification is made. The taxpayer did not notify the Department. The Department obtained the information from the Internal Revenue Service; therefore the penalty is appropriate.

FINDING

Taxpayer's protest is denied.